

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 62**

[Region II Docket No. PR6-233b; FRL-7093-8]

Approval and Promulgation of State Plans for Designated Facilities; Puerto Rico**AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the Commonwealth of Puerto Rico. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing small municipal waste combustion (MWC) units. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing small MWC units in the state and it submits a negative declaration letter in place of the State Plan.

DATES: Written comments must be received on or before November 29, 2001.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007-1866.

A copy of the Commonwealth submittal is available for inspection at the Region 2 Office in New York City. Those interested in inspecting the submittal must arrange an appointment in advance by calling (212) 637-4249. Alternatively, appointments may be arranged via e-mail by sending a message to Ted Gardella at Gardella.Anthony@epa.gov. The office address is 290 Broadway, Air Programs Branch, 25th Floor, New York, New York 10007-1866.

A copy of the Commonwealth submittal is also available for inspection at the respective offices:

Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico 00917.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone, (212) 637-4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules section of this **Federal Register**.

The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the Commonwealth of Puerto Rico on August 2, 2001. The negative declaration officially certifies to EPA that, to the best of the Commonwealth's knowledge, there are no small municipal waste combustion units in operation in the Commonwealth of Puerto Rico. This negative declaration concerns existing small municipal waste combustion units throughout the Commonwealth of Puerto Rico. The negative declaration satisfies the federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled "Emission Guidelines for Existing Small Municipal Waste Combustion Units" (65 FR 76378, December 6, 2000).

Dated: October 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 01-27284 Filed 10-29-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 70**

[WI; FRL-7094-4]

Clean Air Act Proposed Full Approval Of Operation Permits Program; WI**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The EPA proposes to fully approve the Wisconsin title V Federal Operation Permits Program, submitted by Wisconsin pursuant to subchapter V of the Clean Air Act, which requires states to develop, and to submit to EPA for approval, programs for issuing operation permits to all major stationary sources and to certain other sources.

DATES: EPA must receive comments on this proposed action on or before November 21, 2001.

ADDRESSES: Comments should be addressed to: Robert Miller, Chief, Permits and Grants Section, at the address noted below. Copies of the state's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois, 60604. Please

contact Beth Valenziano at (312) 886-2703 or Susan Siepkowski at (312) 353-2654 to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano or Susan Siepkowski, AR-18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Numbers: (312) 886-2703/353-2654 (respectively), e-mail addresses: valenziano.beth@epa.gov or siepkowski.susan@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is being addressed in this document?
What are the program changes that EPA proposes to approve?
What is involved in this proposed action?

What Is Being Addressed in This Document?

As required under Subchapter V of the Clean Air Act ("the Act"), EPA has promulgated regulations that define the minimum elements of an approvable state operation permits program and the corresponding standards and procedures by which the EPA will approve, oversee, or withdraw approval of the state programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V of the Act, generally known as title V, and the implementing regulations, states developed, and submitted to EPA, programs for issuing operation permits to all major stationary sources and to certain other sources. Where a program substantially, but not fully, met the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a program by the expiration of its interim approval period, EPA must establish and implement a federal program under 40 CFR part 71 in that state.

EPA promulgated final interim approval of the Wisconsin title V program on March 6, 1995 (60 FR 12128), and the program became effective on April 5, 1995.

Wisconsin submitted revisions to its title V program for EPA approval on March 28, 2001, and submitted supplemental packages on September 5, 2001 and September 17, 2001. The submittals included corrections to the interim approval issues identified in the March 6, 1995 interim approval action and additional program revisions and updates.

What Are the Program Changes That EPA Proposes To Approve?

A. Title V Interim Approval Corrections

In the March 6, 1995 action, EPA identified eight interim approval issues. The following is a description of the issues and their subsequent resolution.

1. Criminal Fines

Wisconsin's operation permit program regulations did not provide for criminal fines against any person who knowingly makes any false material statement, representation, or certification in a permit application, as required by 40 CFR 70.11(a)(3)(iii). To correct this program deficiency, the Wisconsin Department of Natural Resources (WDNR) created section Natural Resources (s. NR) 407.05(10), Wisconsin Administrative Code (Wis. Adm. Code), to require all material statements, representations, and certifications in a permit application to be truthful. This provision is in turn subject to the state's criminal enforcement authority, section (s.) 285.87(2), Wisconsin Statutes (Wis. Stats.) [s. 144.426(2)(a)¹], which provides criminal penalty authority for violations of state regulations. Wisconsin's revised Attorney General's opinion of January 5, 2001, Section XIX, confirms the state's authority to impose criminal fines for false statements in permit applications.

2. Application Shield for New and Modified Sources

40 CFR 70.7(b) requires that the application shield must apply to all part 70 sources that meet the application shield requirements. The following Wisconsin legislation and regulations did not provide an application shield for "new" and "modified sources" (as defined by ss. 285.01(27) and (29), Wis. Stats. [ss. 144.30(20s) and (20e)]: s. 285.60(1)(b), Wis. Stats. [s. 144.391(1)(b)]; s. 285.62(8), Wis. Stats. [s. 144.3925(7)]; s. NR 407.06(2), Wis. Adm. Code; and s. NR 407.08, Wis. Adm. Code.

To correct these program deficiencies, the state amended the four provisions to provide the application shield to new and modified sources. Wisconsin amended s. 285.60(1)(b), Wis. Stats. [s. 144.391(1)(b)], to include the reference to the application shield provision in s. 285.62(8), Wis. Stats. [s. 144.3925(7)].

The state corrected the application shield provision in s. 285.62(8), Wis. Stats. [s. 144.3925(7)], by replacing the term "existing source" with "stationary source", which encompasses new, modified, and existing sources. Wisconsin also revised s. NR 407.06(2), Wis. Adm. Code, by replacing the term "existing source" with "stationary source". Finally, the state corrected s. NR 407.08(2) by referencing the application shield provisions in s. 285.62(8), Wis. Stats., [s. 144.3925(7)] for new and modified sources. Wisconsin's revised Attorney General's opinion, Section XX, confirms the state's authority to provide an application shield for new and modified sources.

3. Operational Flexibility for New and Modified Sources

The following legislation and regulation did not provide for operational flexibility, as required by 40 CFR 70.4(b)(12)(i), for "new" and "modified sources": s. 285.60(4), Wis. Stats. [s. 144.391(4m)]; and s. NR 407.025, Wis. Adm. Code. 40 CFR 70.4(b)(12)(i) must apply to all part 70 sources. To correct these program deficiencies, the state revised s. 285.60(4), Wis. Stats. [s. 144.391(4m)], and s. NR 407.025, Wis. Adm. Code., by replacing the term "existing source" with "stationary source". The term stationary source encompasses new, modified, and existing sources. Wisconsin's revised Attorney General's opinion, Section XIII, confirms the state's authority to provide operational flexibility for new and modified sources.

4. Authority To Deny a Renewal Application for a Noncomplying Source

40 CFR 70.6(a)(6)(i) requires that any permit noncompliance is grounds for denial of a permit renewal application. Wisconsin's legislation and regulations did not provide the authority to deny a renewal application for a source that is not in compliance. To correct this deficiency, Wisconsin added s. 285.66(3)(c), Wis. Stats. [s. 144.396(3)(c)] to provide the authority to deny a renewal application for a noncomplying source. The WDNR also revised s. NR 407.09(1)(f)1, Wis. Adm. Code, to state that noncompliance with an operation permit is grounds for denial of a permit renewal application. Wisconsin's revised Attorney General's opinion, Section IV, confirms the state's authority to deny a renewal application for a noncomplying source.

5. Reopening for Cause

40 CFR 70.7(f)(1) establishes the conditions under which reopening a permit for cause is mandatory. Wisconsin's regulations, ss. NR 407.14(1)(b), (c), (d), and (h), Wis. Adm. Code, allowed discretion in triggering the permit reopening for cause provisions. To correct these deficiencies, WDNR revised s. NR 407.14 to require the department to reopen a permit for cause pursuant to the conditions in 40 CFR 70.7(f)(1). The requirement for reopening the acid rain portion of the permit (40 CFR 70.7(f)(1)(ii)) is contained in the state's acid rain rule, under s. NR 409.12(6). The state regulations also retain discretionary reopening for cause authority for conditions beyond those required by 40 CFR 70.7(f)(1). Wisconsin's revised Attorney General's opinion, Sections XI and XV, confirms the state's authority for permit reopenings.

6. Duty To Supplement or Correct Applications

Wisconsin's regulations, s. NR 407.05, Wis. Adm. Code, did not include the duty to supplement or correct application provisions, as required under 40 CFR 70.5(b). To correct this deficiency, WDNR added these application requirements to s. NR 407.05(9), Wis. Adm. Code. Wisconsin's revised Attorney General's opinion, Section XII, confirms the duty to supplement or correct applications.

7. Permit Requirements for New and Modified Noncomplying Sources

Wisconsin had numerous statutory and regulatory deficiencies related to the lack of authority to issue operation permits to new and modified part 70 sources that are not in compliance. Wisconsin's revised Attorney General's opinion, Section III, addresses all of the following new and modified noncomplying source permit requirements. First, 40 CFR 70.3(a) requires that the permitting agency must have authority to issue permits to all part 70 sources. S. 285.64(1)(a), Wis. Stats. [s. 144.3935(1)(a)], did not provide WDNR the authority to issue operation permits to "new" and "modified" part 70 sources that are not in compliance. Wisconsin corrected this deficiency by replacing the term "existing source" with "stationary source" in s. 285.64(1)(a), Wis. Stats. [s. 144.3935(1)(a)]. The term stationary source encompasses new, modified, and existing sources.

Second, 40 CFR 70.5(c)(8)(ii)(C) includes specific compliance plan

¹ Since EPA promulgated interim approval of Wisconsin's operation permit program, the state recodified the environmental chapters of the Wisconsin statutes. This recodification became effective on January 1, 1997. To address the recodification, this proposal references the current Wisconsin statutory citations, but acknowledges the old citations (which were in effect when EPA granted Wisconsin interim approval) in brackets.

application requirements for all part 70 sources that are not in compliance. S. NR 407.05(4)(h)2.c., Wis. Adm. Code, did not provide that compliance plan application requirements for noncomplying new and modified sources include a narrative description of how the sources will achieve compliance. Wisconsin corrected this deficiency by replacing the term “existing source” with “stationary source” in s. NR 407.05(4)(h)2.c., Wis. Adm. Code.

Third, 40 CFR 70.5(c)(8)(iii)(C) requires schedules of compliance in all noncomplying part 70 source applications. S. NR 407.05(4)(h)3.c., Wis. Adm. Code, did not provide for schedule of compliance application requirements for noncomplying new and modified sources. Wisconsin corrected this deficiency by removing the term “for existing sources” in s. NR 407.05(4)(h)3.c., Wis. Adm. Code. The provision now applies to all noncomplying sources.

Fourth, 40 CFR 70.5(c)(8)(iv) requires progress report schedules in all noncomplying part 70 source applications. S. NR 407.05(4)(h)4., Wis. Adm. Code, did not provide for progress report application requirements for noncomplying new and modified sources. Wisconsin corrected this deficiency by replacing the term “existing sources” with “stationary sources” in s. NR 407.05(4)(h)4., Wis. Adm. Code.

Fifth, 40 CFR 70.6(c)(3) and (4) require schedule of compliance and progress report requirements in all part 70 permits that are issued to noncomplying sources. S. NR 407.09(4)(b), Wis. Adm. Code, did not provide for schedule of compliance and progress report requirements in permits issued to noncomplying new and modified sources. Wisconsin corrected this deficiency by replacing the term “existing sources” with “stationary sources” in s. NR 407.09(4)(b), Wis. Adm. Code.

8. Source Exemptions

A “major source,” as defined at 40 CFR 70.2, among other things, is a source whose potential to emit is above specific emission threshold levels. A source can avoid major source status by accepting limits on its potential to emit.

As discussed in the March 6, 1995 final interim approval, ss. NR 407.03(1)(d), (g), (h), (o), (s), and (sm) exempted certain sources from permitting requirements without providing adequate procedures to limit

their potential to emit². In addition, s. NR 407.03(1)(t), Wis. Adm. Code, potentially exempted certain major part 70 sources from the program, depending on the type of source. Therefore, s. NR 407.03(1)(d), (g), (h), (o), (s), (sm), and (t) improperly limited WDNR’s ability to permit all major sources, as required by 40 CFR 70.3.

The WDNR corrected ss. NR 407.03(1)(d), (g), (h), (o), and (s) by creating “prohibitory rules” that include specific recordkeeping requirements for each exemption in s. NR 407.03(4). See EPA’s January 25, 1995 memorandum from John Seitz and Robert Van Heuvelen entitled: “Options for Limiting the Potential to Emit of a Stationary Source under Section 112 and Title V of the Clean Air Act”, and EPA’s August 27, 1996 guidance from John Seitz and Robert Van Heuvelen entitled: “Extension of January 25, 1995 Potential to Emit Transition Policy”. The state corrected s. NR 407.03(1)(sm), Wis. Adm. Code, by specifically excluding major sources, sources subject to sections 111 or 112 of the Act, and sources subject to certain state toxics requirements from being eligible for the exemption. The WDNR also corrected s. NR 407.03(1)(t) by specifically excluding major sources from being eligible for the exemption. Wisconsin’s revised Attorney General’s opinion, Section II, confirms the state’s authority to require operation permits for all part 70 sources.

B. Other Title V Program Revisions

The WDNR has made changes to its title V program in addition to the interim approval corrections. The EPA will address the additional program revisions in a separate rulemaking action.

What Is Involved in This Proposed Action?

A. Proposed Action

The EPA proposes full approval of the Wisconsin operation permits program based on the corrective program revisions the state submitted on March 28, 2001, September 5, 2001, and September 17, 2001. This proposed full approval of Wisconsin’s corrective operation permit program submittal addresses only the requirements of title V and part 70, and does not apply to any

other federal program requirements, such as State Implementation Plans pursuant to section 110 of the Act. The EPA finds that Wisconsin has satisfactorily addressed the program deficiencies identified in EPA’s March 6, 1995 interim approval rulemaking.

B. Citizen Comment Letter on Wisconsin Title V Program

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operation permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group. In settling the litigation, EPA agreed to publish a notice in the **Federal Register**, so that the public would have the opportunity to identify and bring to EPA’s attention alleged programmatic and/or implementation deficiencies in title V programs. In turn, EPA would respond to the public’s allegations within specified time periods, if the comments were made within 90 days of publication of the **Federal Register** document.

The EPA received one timely comment letter pertaining to the Wisconsin title V program. The EPA takes no action on those comments in today’s action. As stated in the **Federal Register** document published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. The EPA will publish a notice of deficiency (NOD) if the Agency determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

Administrative Requirements

Under Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, because it merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law.

² Note that the interim approval action on Wisconsin’s program required limits on potential to emit to be federally enforceable. However, several court cases have vacated the federally enforceable requirement in certain Act programs, including title V. See EPA’s August 27, 1996 guidance from John Seitz and Robert Van Heuvelen entitled: “Extension of January 25, 1995 Potential to Emit Transition Policy”.

This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), because it proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have federalism implications, because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal Government established in the Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060-0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires Federal agencies to use technical standards that are developed

or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs pursuant to title V of the Act, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove an operating permit program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of an operating permit program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operation permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: October 18, 2001.

Thomas V. Skinner,
Regional Administrator, Region V.
[FR Doc. 01-27257 Filed 10-29-01; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MI; FRL-7094-6]

Clean Air Act Proposed Full Approval Of Operating Permits Program; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to fully approve the Michigan Title V Federal Operating Permits Program, submitted by Michigan pursuant to subchapter V of the Clean Air Act, which requires states to develop, and to submit to EPA for approval, programs for issuing operating permits to all major stationary sources and to certain other sources.

DATES: EPA must receive comments on this proposed action on or before November 21, 2001.

ADDRESSES: Comments should be addressed to: Robert Miller, Chief, Permits and Grants Section, at the address noted below. Copies of the state's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois 60604. Please contact Beth Valenziano at (312) 886-2703 to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, AR-18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886-2703, e-mail Addresses: valenziano.beth@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

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What Is Being Addressed in This Document?

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